IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 166 of 1985

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GHANCHI HUSSAIN IBRAHIM HALANI

Versus

GHANCHI ISMAIL KASAM HALANI

Appearance:

MR JR NANAVATI for Petitioner

MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 07/04/2000

ORAL JUDGEMENT

1. This is a revision application under section 29(2) of the Bombay Rent Act at the instance of the original-defendant-tenant, challenging the decree of the eviction passed against him by the Rent Court, which has been confirmed in appeal.

2. Before proceeding with the merits of the matter

it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai [1998(2) GLH 736 = AIR 1998 SC 3325], while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Hohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

3. The respondent plaintiff had filed a suit against the petitioner-defendant-tenant under the provisions of the Bombay Rent Act for a decree of eviction on the ground that the defendant was in arrears of rent for more than six month, and had failed to make payment thereof within 30 days of receipt of the statutory notice, etc. The trial court passed a decree for eviction by upholding the contentions of the landlord, and on the facts of the case applied the provisions of section 12(3)(a) of the Bombay Rent Act and passed a decree for eviction.

4. In the consequent appeal filed by the tenant challenging the aforesaid decree of eviction, the lower appellate court, after appreciating the entire evidence on record, firstly came to the conclusion that on the facts of the case, the case was covered under the provisions of section 12(3)(a) of the Rent Act and a decree for eviction is justified. However, the lower appellate court also considered the facts of the case and the evidence on record, on an assumption that the case would not be covered by section 12(3)(a), and even on the application of section 12(3)(b) of the Rent Act found that the tenant would not be entitled to the protection under this provision, and confirmed the decree of eviction even on this ground.

5. The controversy in the present matter is in a very narrow compass. The landlord's case, whether considered from the point of view of his oral evidence on record, on the plaint or from the earliest point of time i.e. when issuing the statutory notice under section 12

of the Act, was that the tenant was in arrears of rent of more than six months, in respect of the period from 1st September 1972 to 31st March 1978. As against this the defence put up by the tenant is that he has paid the rent in respect of this period, and that on the date of the suit notice he was in arrears of only one month.

6. Thus, the short controversy is on a question of fact as to whether the arrears have been established by the landlord, or whether the payment in respect of the alleged arrears has been proved by the tenant.

7. Both the courts below have accepted the case of the landlord on the basis of his oral evidence. When the landlord asserts that the tenant has not paid rent in respect of a specified period, obviously he cannot establish this negative assertion by any concrete and direct evidence. This assertion can only be disproved by the defendant by proving the existence of the contrary fact i.e. by proving the actual payment.

8. It was, therefore, for the defendant-tenant to establish that he has paid up the so-called arrears of rent. For this purpose the defendant has examined himself at Exh.44. The substance of his deposition is to the effect that the defendant is illiterate, that he used to go to the landlord to make periodic payment of rent, that the landlord did not give receipts in respect of such payments made, and therefore in order to maintain a contemporaneous record of such payments, he always went to the landlord to make payments of rent accompanied by his brother-in-law Usuf.

9. The brother-in-law of the tenant Usuf has been examined at Exh.45 who asserts that he always used to accompany the defendant tenant Ismail Kasam Halani when the latter went to make payments of rent to the landlord, that he (Usuf) maintained a record of such payments in his own dairy. He has produced the dairy on record at Exh.48. Both the courts below have completely and totally discarded the evidence of Usuf on the ground that he is a got up witness and is unreliable and consequently therefore the dairy at Exh.48 could not possibly furnish evidence of payments of rent. Although these are concurrent findings of fact, I have examined them to find out the reasonableness and validity of the same. It must be noted that it has been held that the evidentiary value of the diary at Exh.48 is absolutely nil because it has been found that Usuf was not residing with the defendant-tenant. If Usuf was not residing with the defendant-tenant, there cannot be any question of Usuf

always accompanying the tenant whenever the latter went to make payments of rent to the landlord.

10. It is also pertinent to note that the landlord has candidly admitted that he was not issuing receipts. However, he specifically asserted that he was maintaining a regular record of the rent actually received, and that he is in possession of the relevant account even on the day of his deposition. In fact in the cross of his deposition the landlord has asserted that he has brought this account book with him to the court on that day. It is further significant to note that this assertion of the landlord was not challenged in any manner whatsoever in his cross-examination, and it was, therefore, not essential for the landlord to produce the said account book as a piece of corroborative evidence.

11. In the premises aforesaid, once it is found that the tenant was in arrears of rent for more than six months, and that the amount of rent due on the date of the suit notice has not been paid to the landlord within 30 days of the receipt of the suit notice, the case would be squarely covered by section 12(3)(a) of the Rent Act, and a decree for eviction thereon would be eminently justified.

12. Since I am confirming the concurrent findings of fact recorded by the two courts below on an independent assessment of evidence, and also confirming that the facts of the case are squarely covered by the provisions of section 12(3)(a), it is not necessary for me to independently consider whether the provisions of section 12(3)(b) would apply or not, on an assumption that section 12(3)(a) may not apply.

13. In the premises aforesaid, I find that the decree of eviction passed by the trial court and confirmed in appeal is eminently justified, and that there is no substance in the present revision.

15. This revision is, therefore, dismissed and rule is discharged with no order as to costs.

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